

# Memorandum



**Date:** February 10, 2005

RTC

**To:** Hon. Chairman Joe A. Martinez  
and Members, Board of County Commissioners

Agenda Item No. 1(E)6

**From:** George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over the printed name of George M. Burgess.

**Subject:** Report on Development of DBE Standards for Inclusion in RFP's, including  
Cost-Shifting Prohibitions

---

The following information responds to concerns raised by Commissioners Dennis C. Moss and Barbara J. Jordan at the November 23, 2004 Transportation Committee Briefing at Miami International Airport at which they requested that Miami-Dade Aviation Department staff and the County Attorney's office develop Disadvantaged Business Enterprises (DBE) standards for inclusion in Retail Request for Proposals (RFPs), including cost-shifting prohibitions.

The Commissioners want to ensure that DBEs enter into genuine, fair subtenant agreements with retail proposers and that proposers will not change the DBEs original location, concept, or the DBE subtenant, and that their subtenant agreements are not unduly burdened with more than their fair share of location costs.

As you will recall, the Board approved the Request to Advertise for both the North/South Retail Concessions and the Duty and Tax Free Concessions Programs at their November 30, 2004 meeting.

The Miami-Dade Aviation Department and the County Attorney's office met on December 21, 2004 and reviewed the North/South Retail Concession contract document to ascertain existing language, which would already provide such protection. Following the review of the proposed RFP and lease agreements for the two RFPs, the Department and the County Attorney's office met again to develop contract language to better protect DBE subtenants. It was determined that the following language should be included in the RFP and lease agreements to protect DBE and non-DBE subtenants in the event of any change in the original location, concept, or tenant in response to the RFP:

*"Any change in the location, concept, or tenant proposed in response to the Request for Proposals must be approved in writing by the Department. The subtenant occupying the location submitted in response to the Request for Proposal shall be given notice of the proposed change in writing, with a copy to the Department, and an opportunity to respond in writing to the Department and have an opportunity to be heard by the Department."*

Likewise, the following language should also be included in the RFP document and the lease agreement addressing the concern on cost-shifting prohibitions or additional costs imposed on the DBE or non-DBE subtenant that are not related to its sublease location.

*"Costs not directly related to a location of a subtenant shall not be imposed upon that subtenant except for such costs required by the Department such as the marketing fee and/or common logistics fee."*

The existing North/South Retail Program RFP document requires that the successful proposer(s) coordinate the leasing process with the Department and obtain Department approval of each sublease agreement and terms prior to subleasing. The Aviation Department will work closely to review and approve each DBE sublease and communicate with each DBE listed on the successful proposer(s) DBE plan to identify, discuss and resolve any issues related to signing DBE subleases.

Additionally the DBE Plan (Appendix C, Disadvantaged Business Enterprises Participation Plan/Provision) of the North/South Retail Program RFP requires that the proposer(s) describe the extent and type of DBE subleasing including the location, concept and reason that it will be operated by the DBE. As part of the Evaluation/Selection Process, each proposer's DBE Plan will be evaluated and scored by each Evaluation/Selection Committee member as part of the overall selection process.


The proposed language was also presented to the attendees at both the North/South Retail Concessions pre-proposal meeting on January 6, 2005 and at the Duty and Tax Free pre-proposal meeting on January 11, 2005. Participants were encouraged to provide feedback and input both during the pre-proposal meeting and then to submit comments and or respond to the proposed language. No comments on this subject were received.

The proposed language will be incorporated into the North/South Retail Concessions RFP, the Duty and Tax Free Concessions RFP, and future proposals for concession opportunities. The proposed language has been reviewed by the MDAD County Attorney's office and found to be legally sufficient.



---

Assistant County Attorney

 1/31/05

---

Assistant County Manager